EXHIBIT N

In The Matter Of:

GEN-PROBE INCORPORATED
v.
BECTON, DICKINSON AND COMPANY

BOB van GEMEN, Ph.D.
June 7, 2012

CONFIDENTIAL - ATTORNEYS' EYES ONLY

PURSUANT TO PROTECTIVE ORDER

MERRILL CORPORATION
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that description of the claims, correct? 12:22:05

A. But that's a different question. So what 12:22:09

is described, because the claims are so broad, will 12:22:13

fit in the description of claims, but so will many 12:22:17

other things that were known. But this description 12:22:19

does not cover the scope of the claim. 12:22:22

Q. Is it your understanding of the written 12:22:29

description requirement, as been presented to you or 12:22:31

as you've studied it for purposes of your analysis, 12:22:35

that the scope of the claims has to include every 12:22:41

possible example -- strike that -- that the 12:22:43

specification has to disclose every possible example 12:22:45

that fits within the scope of the claims? 12:22:49

A. No, I don't think it has to describe every 12:22:50

possible example. 12:22:52

Q. How many examples need to be described? 12:22:54

MR. WARE: Objection. Calls for a legal 12:22:54

conclusion. 12:23:01

A. I'm not a lawyer, so I couldn't answer that 12:23:04

question. But again, what is described here by the 12:23:08

inventors does not cover what is claimed by the 12:23:13

inventors as being their invention. 12:23:17

Q. Do you think that the luminometers 12:23:19

described in the specification are incompatible with

realtime amplification?

A. You have to define the real -- I mean, define the realtime amplification you're looking for. PCR, I don't think the luminometer described in the patent cannot perform a PCR reaction because it does not cycle temperature. 12:23:33 12:23:37 12:23:44 12:23:59 12:24:00

Q. Do you have an opinion on whether it's possible to perform thermocycling in the instrument as specifically described by moving the sample between incubators of different temperatures? 12:24:05 12:24:07 12:24:10 12:24:18

A. I think it would be totally impossible. That's not a workable, pragmatic solution, and I don't think it would work. In the instrument, the incubators are spatially separated. It would be, if you transport one tube from one incubator to another, there would be cooling down. There would be no temperature control during the transport. 12:24:21 12:24:24 12:24:30 12:24:33 12:24:35 12:24:37 12:24:44

Q. So is it your opinion that moving a tube or sample within a tube from one incubator to another, the two incubators being at different temperatures, would not be operable? 12:24:49 12:24:52 12:24:53 12:24:56

A. Well, you could probably do it, but just asking ourselves if it would work, and I don't think it would work because of, you know, everybody could see -- it's not my opinion, but everybody could see during transfer there's no temperature control. 12:24:59 12:25:01 12:25:05

Q. Would you agree or disagree that swapping a luminometer with a fluorometer instrument would have been routine as of May of 1998? 12:26:23 12:26:25 12:26:26

MR. WARE: Object to the form of the question. Vague. 12:26:27 12:26:29

A. I couldn't answer that. 12:26:32

Q. So when we were looking at the statement here in the '255 patent that for detection, for example, the analyzer can be conveniently adapted to accommodate a variety of detection methods, would you disagree that it could be adapted to accommodate a detection method that relied on a fluorometer as opposed to a luminometer? 12:26:37 12:26:42 12:26:46 12:26:50 12:26:54 12:26:57 12:26:58

MR. WARE: Object to the form of the question. 12:26:58 12:27:02

A. The instrument is described very precisely with dimensions and stuff. So if you want to replace the luminometer with a fluorometer, it has to be exactly the same dimensions, otherwise it wouldn't fit in the instrument physically. 12:27:05 12:27:09 12:27:12 12:27:15 12:27:17

Does there exist such an instrument? I don't know. Do you have to build it? That could be very difficult if you have to build your fluorometer from scratch and not take it off the shelf. 12:27:22 12:27:25 12:27:28

Q. Why would it be difficult?

A. To build a fluorometer? I assume it would require an engineering effort to do that, like it would require an effort to build all of these instruments. Then you have to build it -- I'm not an expert in fluorometers, but you have to build it in such a way that it would fit physically at the position of the luminometer. If that doesn't happen, you have to change the whole inside of the instrument. 12:27:37 12:27:39 12:27:43 12:27:46 12:27:48 12:27:52 12:27:53 12:27:54 12:27:56

So you're changing much more than just replacing the luminometer. I wouldn't say that's an easy effort. 12:28:01 12:28:01 12:28:05

Q. So one change could require other changes, and you can't even know in advance what changes would be required? 12:28:08 12:28:08 12:28:11

A. I could imagine that, yes. 12:28:23

Q. Now, what about sealing of the amplification tube, you had the discussion about the closed vessel assays. Is it your opinion that the TIGRIS -- strike that. Is it your opinion that the description on the automation patents can't be used to develop an embodiment in which the amplification tube is closed? 12:28:28 12:28:32 12:28:36 12:28:40 12:28:43 12:28:44 12:28:50

A. I did not see how the instrument described here could hold a closed tube. The instrument

described is specifically chosen for a solution where the amplification mixture stays in the tube, and there is many different additions to this tube. 12:29:08 12:29:15 12:29:18

I can't see how you would do that in a closed system. 12:29:19 12:29:24

Q. You described the use of oil, mineral oil, I believe? 12:29:25 12:29:27

A. Yes. 12:29:29

Q. Is it your view that the application of a mineral oil layer closes the tube where amplification occurs? 12:29:35 12:29:36 12:29:39

A. That's an interesting question, because I think mineral oil has some of the aspects of closing a tube, but obviously mineral oil still will allow aspiration of fluid. You can stick a pipette tip through the oil. You can still add liquids that will go through the oil. And if you drop the tube, you will get a huge spill. 12:29:52 12:29:57 12:30:03 12:30:07 12:30:15 12:30:17 12:30:22

So by no means is oil a permanent seal of a tube creating a closed vessel that can be discarded. So in that sense, I don't, you know, although having aspects of closing a tube and preventing aerosol formation, oil is not a permanent seal of a tube. 12:30:28 12:30:34 12:30:36 12:30:42 12:30:44

Q. So --

A. So I could not see how you could have